IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 52

UNITED STATES OF AMERICA,
Petitioner,
vs.
THE UNION CENTRAL LIFE INSURANCE COMPANY,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

BRIEF FOR THE UNION CENTRAL LIFE INSURANCE COMPANY

H. WILLIAM BUTLER,
JOSEPH B. SHERRARD and
FRED C. CULVER, JR.,
Attorneys for Respondent,
CLARK, KLEIN, WINTER, PARSONS & PREWITT,
Of Counsel,
2850 Penobscot Building,
Detroit 26, Michigan.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

INDEX

CITATIONS

Cases: Page

Statutes:

Statutes (continued) Page

Miscellaneous:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 52

UNITED STATES OF AMERICA,
Petitioner,
vs.
THE UNION CENTRAL LIFE INSURANCE COMPANY,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

BRIEF FOR THE UNION CENTRAL LIFE INSURANCE COMPANY

OPINION BELOW

The opinion of the Supreme Court of the State of Michigan is reported at 361 Mich. 283, 105 N.W. 2d 196.

JURISDICTION

The jurisdictional requisites are adequately set forth in the brief for the United States.

QUESTION PRESENTED

Whether a state can protect local real property interests by requiring, as a condition to the filing of a notice of federal tax lien, that the notice of said lien contain a legal description of the real estate sought to be made subject thereto.

STATUTES INVOLVED

Sections 3670, 3671 and 3672(a) (1) and (2) of the Internal Revenue Code of 1939 and 6 Mich. Stat Ann., Sec. 7.751, are set forth in Appendix A, and Sec. 6323 of the Internal Revenue Code of 1954 is set forth in Appendix B.

STATEMENT

The facts are stipulated and are adequately set forth in the brief of United States, on pages 2 to 5, inclusive.

SUMMARY OF ARGUMENT

It is submitted that the decision of the Supreme Court of Michigan should be affirmed for the following reasons:

1. The cases of *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich.) approved *per curiam,* 116 F. 2d 935 (C.A. 6), *Hicks v. Carpenter,* (Cir. Ct. Wayne Co.) 50-1 U.S.T.C., par. 9150, and *United States v. City of Detroit,* 138 F. 2d 418 (C.A. 6), demonstrate that it was the law of the Sixth Circuit at the time of the recording of the mortgage from Robert G. Peters, Jr. and Helen R. Peters, his wife, to Respondent, that a notice of federal tax lien was not valid as against a subsequent mortgagee, pledgee, purchaser, or judgment creditor unless such notice contained a description of the premises intended to be subjected thereto. *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), decided by the Circuit Court of Appeals, is a direct and unqualified holding to this effect and has never been overruled in the jurisdiction where the cause of action arose, or even challenged by the courts of that jurisdiction. The Solicitor General has been unable to cite any contrary authority, and has been forced to rely upon Congressional Reports and views of and positions taken by the United States Treasury Department in an attempt to controvert the established law of the jurisdiction.

2. The law of the Sixth Circuit should be followed rather than the law of the Eighth Circuit as exemplified by the decision of *United States v. Rasmuson,* 253 F. 2d 944 (C.A. 8), because the decision in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) is much more in harmony with the policy of the United States Supreme Court as enunciated in the case of *United States v. Brosnan,* 363

U.S. 237, than is the decision in *United States v. Rasmuson*, 253 F. 2d 944 (C.A. 8). Moreover, as demonstrated in paragraph III, *infra*, the dislocation to local property relationships under the 1942 amendment would have been much more severe than those referred to in *United States v. Brosnan* 363 U.S. 237, had *Youngblood v. United States*, 141 F. 2d 912 (C.A. 6), been decided in favor of the Government.

3. In *Youngblood v. United States, supra*, the Court stated categorically, in clear and unmistable language, that the 1942 amendment to the Federal statute deleting the phrase "*in accordance with the law of the State or Territory in which the property subject to the lien is situated*" and substituting the phrase "*in the office in which the filing of the notice is authorized by the State or Territory*" did not affect the right of a State or Territory to impose reasonable conditions as to recording. It was also held that the recording requirement of the Michigan statute was reasonable. As above stated, *Youngblood v. United States*, 141 F. 2d 912 (C.A. 6), has never been overruled and has continued to be the law of the jurisdiction.

4. The question of priority in Michigan arises only in those cases where the notice of tax lien was filed prior to January 1, 1955 against a taxpayer whose land was subsequently encumbered by a mortgage or other lien, or where he has subsequently sold and conveyed his land, or some interest therein, to another person or persons.

All cases where questions of priority can exist are now barred by the statute of limitations and can arise only where the running of the statute has been suspended. While figures are not, and in the nature of things cannot be available, it seems evident that those cases where a contest

would now be possible must be negligible. In any event the entire question will very soon become completely academic.

ARGUMENT

I.

THE NOTICE OF FEDERAL TAX LIEN AGAINST THE MORTGAGORS, WHICH WAS OFFERED FOR FILING IN THE OFFICE OF THE REGISTER OF DEEDS FOR OAKLAND COUNTY, MICHIGAN WITHOUT LEGAL DESCRIPTION DOES NOT TAKE PRIORITY OVER RESPONDENT'S MORTGAGE.

Respondent submits that the law in this case is clear and leads to but one conclusion, namely, that the federal tax lien filed by the United States does not have priority over respondent's mortgage. The Michigan statute was express and permitted the Director of Internal Revenue to file a notice of federal tax lien with the Register of Deeds for the county in which the land against which the lien was to be asserted is located. This statute (Act 104, P.A. 1923) 6 M.S.A. (1936 Ed.) §7.751 remained in effect during the entire period of the transactions, involved in this case. It read as follows:

> "§7.751) U. S. tax liens; filing of notice, contents; register of deeds, duty. Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred

eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment *and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated;* and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled 'Record of United States Tax Liens', indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States. (C.L. '48, §211.521; C.L. '29 §3746)." (Emphasis supplied.)

Since the lien involved in this case did not conform to the italicized requirements of the statute and was never accepted for record by the register of deeds of Oakland County there was no notice given to the respondent of the pre-existing federal tax lien at the time the mortgage was recorded. As indicated in the Statement of Facts contained in the brief of the United States, the Circuit Court for the County of Oakland determined that the mortgage was superior to the improperly filed lien of the Federal Government and entered a decree enforcing the lien of the mortgage.

Moreover, there is nothing in this statute which in any way prohibited the recording of the notice of lien. It merely required that this notice of lien, like any claim against real property in the State of Michigan, contain a legal description of the real estate. This would enable one making a search of the title to ascertain the existence of the United

States tax lien far more readily, and without the difficulty and confusion otherwise involved, thus eliminating the risk of failure of discovery. The Government in this instance simply did not see fit to abide by the requirements of the statute.

The Attorney General of the State of Michigan, by opinion dated September 10, 1953, (Opinion No. 1709) declared that a federal tax lien must contain a description of the land if it is to be recorded. As a result, it is not necessary to go beyond the law of Michigan to determine the issues in this case. Since the federal tax lien was not recorded, and since it is undisputed that the respondent had no actual knowledge of it, the lien cannot supersede the mortgage of respondent.

However, there is even stronger authority which controls this case and supports the decree of the Michigan Supreme Court. The Circuit Court of Appeals for the Sixth Circuit in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) ruled on the very question presented here, and found that this lien was not recordable, and therefore could not take priority over or supersede the claim of the mortgagee. This case was decided at the time when the same provisions of the Internal Revenue Code were in effect as when the mortgage was given to the respondent and recorded, and when the Michigan statute above quoted was also in force.

In the *Youngblood* case, *supra,* an action of mandamus was brought against Youngblood, Register of Deeds for Wayne County, to compel him to accept for recordation a notice of tax lien similar to the one in this case, which contained no legal description of the land involved. The court expressly held that the Department of Internal Revenue had no right to override the recording laws, and ruled

hat unless the lien for federal taxes contained a compre-
ensive description of the land, it would not be acceptable
or recording. The court said significantly enough, at pag
14:

"The federal statute before us for interpretation prescribes that the collector of internal revenue shall file the lien notice in an office designated by state law. The Michigan legislature has denominated that office as the office of the register of deeds; but has conditioned acceptance for filing there upon the inclusion of a description of the land in the notice of lien for federal taxes.

• • • • •

"A state's right to safeguard muniments of title to land within its borders should not be lightly denied upon a strained assumption that Congress meant to impeach that right. *The amendment contained in the Revenue Act of 1942 evidences no change of attitude on the part of Congress* in its recognition of the right of a state to regulate the filing of federal tax lien notices. Under the existing enactment the notice must be filed in an office authorized by the state; or, if no such office has been designated, then in the office of the United States District Court Clerk. Michigan has designated an office, that of the register of deeds; but has not authorized the filing of the notice in the form presented by the collector. In the lien notice under present consideration, an essential ingredient to conform to the state law is missing. The land is not described. Mere inconvenience to federal tax officials in procuring and filing descriptions of land owned by delinquent taxpayers supplies no sound basis for the issuance of peremptory writ of mandamus by a federal court, directing a state ministerial officer to violate his obvious duty of compliance with the state law under which he acts." (Emphasis supplied.)

This decision was never appealed, nor has it been overruled. Subsequently *Hicks v. Carpenter*, (Cir. Ct. Wayne Co.) 50-1 U.S.T.C. par. 9150 was decided, and the same conclusion was reached. No appeal was ever taken from that decision, and it constituted a further declaration of the law in 1954 when the present mortgage was given to the respondent. *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) continues to be controlling and the law of this jurisdiction. Moreover, we respectfully suggest that the Michigan statute and Attorney General's decision have been consistently followed by the register of deeds for Oakland County. *Youngblood* has virtually become a rule of property. To upset it could very well cause serious repercussions and affect the stability of title throughout this jurisdiction.

Youngblood v. United States, 141 F. 2d 912 (C.A. 6) has stood unchallenged and even uncriticized by the courts of the Sixth Circuit up to the change in the Federal act made in 1954. During this period countless title examiners, abstract companies, title insurance companies and loaning agencies have relied on the law of the state and circuit with reference to real estates transactions. In fact few, if any, abstracts contain a search for notices of federal tax lien made in the office of the District Clerk of the Federal court up to the time of the filing of the notice of the tax lien in question. Title examiners naturally relied on an abstract as a complete history of title, and under modern conditions pressure is too great to expect them to make additional searches in other offices which are unnecessary according to the established law of the jurisdiction.

II.

THE 1942 AMENDMENT TO SECTION 3672(a) DID NOT EFFECT A CHANGE IN THE RIGHT OF A STATE OR TERRITORY TO REQUIRE THAT A NOTICE OF FEDERAL TAX LIEN CONTAIN A DESCRIPTION OF THE LAND IN QUESTION AS A PREREQUISITE FOR RECORDING.

At the time of the filing of the U. S. tax lien in question, the 1942 amendment to the pertinent portion of Section 3672(a) of the Internal Revenue Code was in effect. Nevertheless the cases of *United States v. Maniaci*, 36 F. Supp. 293 (W.D. Mich.) affirmed *per curiam*, 116 F. 2d 935 (C.A. 6), and *United States v. City of Detroit*, 138 F. 2d 418 (C.A. 6), are also important and have considerable bearing on the question at issue, even though decided with reference to the Federal statute as it existed prior to the *1942* amendment. Prior to the 1942 amendment, the pertinent portion of Section 3672(a) of the Internal Revenue Code read as follows:

> "(a) *Invalidity of Lien Without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the creditor—
>
> "(1) *Under State or Territorial Laws.—In accordance with the law of the State or Territory in which the property subject to the lien is situated,* whenever the State or Territory has by law provided for the filing of such notice; or
>
> "(2) *With Clerk of District Court.*—In the office of the Clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notices; or * * *."

The case of *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich.) affirmed *per curiam,* 116 F. 2d 935 (C.A. 6), was decided when the above quoted language *"in accordance with the law of the State or Territory in which the property subject to the lien is situated"* was in effect. The court ruled that this provision in the code meant exactly what it said and any tax lien which did not contain a description of the land in question, as required by the Michigan Act, was not entitled to record in the office of the Register of Deeds. In view of the unmistakably clear language of the Federal Statute, it is difficult to see how the court could have decided otherwise. In the case of *United States v. City of Detroit,* 138 F. 2d 418 (C.A. 6), the decision of *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich.) affirmed *per curiam* 116 F. 2d 935 (C.A. 6), was followed.

Under the 1942 amendment to Sec. 3672(a) the phrase *"in accordance with the law of the State or Territory"* was deleted and the clause *"in the office in which the filing of the notice is authorized by the State or Territory"* was substituted. Nevertheless, in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) where the cause of action arose after the amendment, the Circuit Court of Appeals for the Sixth Circuit held that this change in the wording of the statute did not alter the legal situation as to the recording of the notice of lien, and that Congress did not intend by this language to impeach a State's right to protect its citizens by imposing reasonable requirements with respect to recordation. We quote again from *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), at page 914:

> "A State's right to safeguard muniments of title to land within its border should not be lightly denied upon a strained assumption that Congress meant to impeach that right. *The amendment contained in the Revenue Act of 1942 evidences no*

change of attitude on the part of Congress in its recognition of the right of a State to regulate the filing of Federal tax lien notices." (Emphasis supplied.)

Indeed, if it had been the intention of Congress to effect such a radical change in the law which had become a rule of property in this State, it would have spelled such intention out in clear and unmistakable language in the 1942 amendment instead of using the clause in question. It would have been an extremely simple matter to do so had this been the intent. Furthermore, it can scarcely be contended that a court decision construing a Federal Statute, and particularly a decision of the Circuit Court of Appeals, is less to be relied upon than a mere Congressional Committee Report, the substance of which was never incorporated into the wording of the statute. Is it the duty of a prospective mortgagee or his adviser to place reliance on the report of a Congressional Committee rather than to base his conduct on decisions of the Circuit Court of Appeals construing the language of that statute and on the established law of the Circuit?

Thus *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich.) affirmed *per curiam,* 116 F. 2d 935 (C.A. 6), and *United States v. The City of Detroit,* 138 F. 2d 418 (C.A. 6), also clearly demonstrate the attitude and policy of the Federal courts, of the Sixth Circuit in upholding the Michigan enabling statute (Act 104 of the Public Acts of 1923, as amended) with respect to its requirement that notices of federal tax liens contain a description of the land claimed to be subject to the lien. All Federal cases in this Circuit involving the question under discussion look with decided favor on the attitude of the Michigan Legislature and its desire to protect the real estate titles of the citizens

of this State. Moreover, the Attorney General in his opinion of September 1953 confirmed the logic of *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6). Interestingly enough, the United States is unable to cite any law from the Sixth Circuit or this state court contrary to *Youngblood v. United States, supra.*

It is argued at some length in behalf of the United States, pages 12-16 United States Brief, that Congress never intended at any time, even prior to the 1942 amendment, to permit the States of Territories to designate the manner, but only the place, of recording notices of federal tax liens. If that were the case, it seems strange indeed that Congress selected the statutory phrase "in accordance with the *laws* of the State or Territory in which the property subject to the lien is located" merely to direct the authorization of a *place* for filing of the notice of tax lien. Not only do the cases of *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich) affirmed *per curiam,* 116 F. 2d 935 (C.A. 6), and *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), completely refute this argument but it is asking too much for one to believe that Congress would have employed such a totally inept and misleading phrase for this purpose.

III.

THE DECISION BELOW REFLECTS THE POLICY OF THE UNITED STATES SUPREME COURT.

The policy of the Supreme Court of the United States with respect to federal tax liens is well stated in the case of *United States v. Brosnan,* 363 U.S. 237, 241 from which we quote as follows:

> "We nevertheless believe it desirable to adopt as federal law state law governing divestiture of fed-

eral tax liens, except to the extent that Congress may have entered the field. It is true that such liens form part of the machinery for the collection of federal taxes, the objective of which is 'uniformity, as far as may be'. *United States v. Gilbert Associates*, 345 U. S. 361, 364, 73 S. Ct. 701, 703, 97 L. Ed. 1071. However, when Congress resorted to the use of liens, it came into an area of complex property relationships long since settled and regulated by state law. We believe that, so far as this Court is concerned, the need for uniformity in this instance is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures. Long accepted nonjudicial means of enforcing private liens would be embarrassed, if not nullified where federal liens are involved, and many titles already secured by such means would be cast in doubt. We think it more harmonious with the tenets of our federal system and more consistent with what Congress has already done in this area, not to inject ourselves into the network of competing private property interests, by displacing well-established state procedures governing their enforcement or superimposing on them a new federal rule. Cf. *Board of Com'rs of Jackson County v. United States*, 308 U. S. 343, 60 S. Ct. 285, 84 L. Ed. 313."

It has been a long-established policy of the Legislature and Courts of the State of Michigan to give full recognition and protection to the recording laws of the State, to the end that they may be relied upon insofar as is practicable to furnish evidence of the ownership and validity of interests in real estate. The Michigan legislature, for example, has always required that notices of levy on execution and attachments contain a legal description of the land intended to be subjected thereto. Judgments alone in Michigan do not constitute a lien on real estate. This purpose

would have been seriously impaired by the indiscriminate filing of instruments containing no legal description of the land affected thereby, particularly where the then existing statutes and court decisions indicated that a description was necessary. Prior to the 1942 amendment the federal statute pertaining to the recording of notices of federal tax liens gave recognition to this policy and similar long-established policies of other States by providing for the filing of such notices *in accordance with the law of the State or Territory in which the property subject to the lien is situated.* The case of *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) held that by the 1942 amendment Congress did not intend to effect any fundamental change in the law, and did not intend thereby to impeach a State's rights to protect its citizens by imposing reasonable requirements with respect to recordation. It is our contention therefore that the *Youngblood* decision is much more in harmony with the language above quoted from *United States v. Brosnan,* 363 U.S. 237, than is the holding in the case of *United States v. Rasmuson,* 253 F. 2d 944 (C.A. 8), which was decided in another Circuit and pertained to a jurisdiction where the Torrens system of land titles was in effect. The decision in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), has become a rule of property in the State of Michigan and many individuals purchasing real estate or interests therein, as well as title and mortgage companies have, as a consequence, relied upon the records of the Register of Deeds rather than make additional searches in other offices where a notice of lien might be filed. In modern times the pressure of business is too great for one to do those things which the law tells them is unnecessary.

It is argued rather assiduously in paragraph 4 on page 19 of the brief for the United States that to permit a State

to apply its own filing requirements to federal tax liens would defeat the "cardinal principle of Congress in its tax scheme" of achieving "uniformity" as far as may be. It was admitted, however, that in the case of *United States v. Brosnan*, 363 U. S. 237, the court held that "the need for uniformity was outweighed by the severe dislocation to local property relationships which would result from our disregarding *State procedures.*" (Emphasis added.) The Solicitor General goes on to state in the brief that there would be no such dislocation if the States and Territories were denied the power to require that notices of federal tax liens contain a description of the real estate sought to be subjected thereto. We most emphaticallly disagree. Since the repeal, during the year 1956, of the Michigan statute providing for the manner of recording notices of federal tax liens, notices of such liens have altogether too frequently been filed against a real property owner having an identical name with one or more other real property owners in the same jurisdiction, thus clouding the titles of all other owners who have identical names, regardless of whether a claim for tax delinquency was asserted against them. This happens much more often that might be supposed. Moreover, in many cases the Internal Revenue Department has greatly aggravated the difficulty by the use in the notice of only the initials of the alleged delinquent taxpayer, as, for example, where a notice of lien is filed against "J. Smith." The utter confusion which inevitably results is too obvious to require further explanation. Not only are all owners having similar names injured by the clouding of their titles, but all persons engaged in transactions involving any real estate to which the lien could conceivably attach are subjected to great inconvenience and confusion. This is precisely the mischief which the

Michigan recording statute was designed to prevent. We submit that a far greater dislocation to local property relationship has been caused in this manner than was caused prior to the *Brosnan* decision by the federal law requiring a procedural change in the method of foreclosing a mortgage. (See *United States v. Brosnan*, 363 U.S. 237.)

In accordance with the policy of the United States Supreme Court as outlined in the *United States v. Brosnan*, 363 U.S. 237, we submit that the decision in *Youngblood v. United States*, 141 F. 2d (C.A. 6), should not be overruled.

IV.

THE REQUIREMENTS OF THE MICHIGAN RECORDING STATUTE DID NOT IMPOSE AN UNDUE BURDEN ON THE GOVERNMENT.

It is claimed in the brief of the United States (pages 18 and 19) that the ruling of the Michigan Supreme Court that the State can require the Government to describe in its notice of lien the real estate subject to the lien, would impose on the Government an unwarranted burden that would seriously reduce the efficacy of the federal tax lien as a means of collecting taxes. We believe that this statement is grossly exaggerated, for the following reasons:

After the effective date of the 1954 amendment to the federal statute concerning notices of tax liens, States and Territories could no longer prescribe the form and content of a notice of federal tax lien but merely designate an office for filing. Subsequently the Michigan statute requiring the insertion of a description of the land in question in all notices of federal tax liens, as a prerequisite for recording in the office of the Register of Deeds, was repealed,

although the repeal did not take place until 1956 (Act 107 Public Acts of 1956, 6 Mich. Stat. Ann., Sec. 7.751, 7.752, 7.753). In the vast majority of cases where notices of federal tax liens have been filed against mortgaged property where foreclosures or other priority contests have arisen the notices have ben filed since the effective date of the 1954 amendment. Of the thousands of notices of federal tax liens which the Government states were filed annually in Michigan, a considerable percentage must have been filed against persons who had no real estate. Secondly, even where the taxpayer owned real estate, a further percentage was doubtless filed against persons who had neither created subsequent interests in their land nor been subjected to further encumbrances thereon, so that no question of priority could have arisen. Thirdly, in those cases where mortgages on real estate do exist, the records show repeated instances where notices of federal tax liens were filed after the recording of the mortgages so that the tax lien would in any event be subordinate, regardless of the place of filing, or whether they contained a description or not. In other words, the Government's ground for concern would be limited to those cases where both (1) the notice of tax lien was filed prior to the effective date of the 1954 amendment, and (2) the taxpayer had real estate encumbered by a mortgage or had conveyed by an instrument, which in either case was recorded after the filing of the federal tax lien. We venture to state that the number of cases where he above set of facts concurrently exist constitutes but a very small fraction of the number of annual liens mentioned in the Government's brief. The brief does not disclose any cases presently pending in which the question is in controversy. Furthermore, as time goes on, the number of cases involving the situation complained of must necessarily diminish so that in a comparatively short period of time

the question will become entirely academic. We submit that even at the present time this number is so small that the effect of the ruling of the Michigan Supreme Court below on the revenue collecting agencies of the Government if affirmed would be of exceedingly slight consequence.

Lastly, and most important of all, the enforcement of United States tax liens is barred by the statute of limitations after the expiration of a period of six years from the date of assessment. Hence the six-year limitation period would normally have expired January 1, 1961, at the latest, as to all liens, notice of which was filed prior to the effective date of the 1954 amendment. As previously stated, no question can be raised as to the priority of those notices of lien filed after January 1, 1955, the effective date of the amendment, because of failure to include a legal desciption of the land in question.

It is true that the running of the statute of limitations is suspended in certain instances, but questions can now arise only in those cases where the statute has been tolled, and then only where the special set of circumstances described in the preceding paragraphs exist. Therefore, the number of liens filed prior to January 1, 1955, where the possibility of contest exists because of a lack of legal description, must necesarily be further reduced to a point which is absurdly low and in all probability negligible. Even this small number is continually decreasing with the passage of time. Consequently it seems clear that if the ruling of the Michigan Supreme Court is sustained the adverse effect on the tax collecting agencies of the Government would be negligible.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the Supreme Court of the State of Michigan should be affirmed.

H. WILLIAM BUTLER,
JOSEPH B. SHERRARD,
FRED C. CULVER, JR.,
Attorneys for Respondent;
CLARK, KLEIN, WINTER, PARSONS & PREWITT,
Of Counsel,
2850 Penobscot Building,
Detroit 26, Michigan.

APPENDIX A

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all *property and* rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.
(26 U.S.C. 1952 ed., Sec. 3671.)

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a.) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

(26 U.S.C. 1952 ed., Sec. 3672.)

6 Michigan Statutes Annotated (1936 ed.):

CHAP. 63. MISCELLANEOUS PROVISIONS

* * * * *

FILING OF FEDERAL TAX LIENS

Act 104, 1923, p. 142; eff. Aug. 30

An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties, of this state, pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States

The People of the State of Michigan Enact:

SEC. 7.751. *U.S. Tax Liens; Filing of Notice, Contents; Register of Deeds, Duty.* Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such tax-

payer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty [50] cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens," indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six [3186] of the revised statutes of the United States. (C. L. '48, §3746.)

APPENDIX B

Internal Revenue Code of 1954:

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under state or territorial laws.*—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With Clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.*—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of Notice*—If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form of content of a notice of lien.

* * * * *

(26 U.S.C. 1958 ed., Sec. 6323.)